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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. [redacted] 67

F. L. SHUTTLESWORTH and CHARLES BILLUPS,

Petitioners,

—v.—

CITY OF BIRMINGHAM.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. .....

F. L. SHUTTLESWORTH and CHARLES BILLUPS,

Petitioners,

—v.—

CITY OF BIRMINGHAM.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

Petitioners pray that a writ of certiorari issue to review the judgments of the Court of Appeals of Alabama, rendered on May 30, 1961.

Citation to Opinions Below

The opinions of the Alabama Court of Appeals are reported in 134 So. 2d 213 and 134 So. 2d 215 and are set forth in the Appendix hereto *infra*, pp. 1a, 2a and 8a. The denial of certiorari by the Supreme Court of Alabama is reported at 134 So. 2d 214 and 134 So. 2d 215.

Jurisdiction

The judgments of the Alabama Court of Appeals were entered on May 30, 1961 (R. 44).* Appendix pp. 3a, 9a, *infra*.

* There are separate records for the *Shuttlesworth* and *Billups* cases. References to both records were made by a single citation where the page numbers are the same.

Application for rehearing before the Court of Appeals of Alabama was denied on June 20, 1961 (Shuttlesworth R. 48, 49; Billups R. 47). A petition to the Supreme Court of Alabama for Writ of Certiorari was denied on September 25, 1961, and application for rehearing was overruled on November 16, 1961 (Shuttlesworth page following R. 49; Billups, page following R. 47). The jurisdiction of this Court is invoked pursuant to 28 United States Code, §1257 (3), petitioners having asserted below, and asserting here, the deprivation of his rights, privileges and immunities secured by the Constitution of the United States.

Question Presented

Alabama has convicted petitioners of "incit[ing] or aid-[ing] or abet[ting] another person to go or remain on the premises of another after being warned . . .". The record showed essentially that petitioner Shuttlesworth "asked for volunteers to participate in the sit-down demonstrations" and that petitioner Billups was present at this request. There was no evidence that either persuaded anyone to violate any law, or that anyone following petitioners' suggestions did violate any law, valid under the Fourteenth Amendment to the United States Constitution. A Birmingham ordinance requires racial segregation in restaurants.

In convicting and sentencing petitioners respectively to 180 and 30 days hard labor, plus fines, has Alabama denied liberty, including freedom of speech, secured by the due process clause of the Fourteenth Amendment?

Constitutional and Statutory Provisions Involved

This case involves the following constitutional provision:

Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The case also involves the following provisions of the General Code of Birmingham of 1944:

> "Section 824. It shall be unlawful for any person to incite, or aid or abet in, the violation of any law or ordinance of the city, or any provision of state law, the violation of which is a misdemeanor."
>
> "Section 1436 (1944), *After Warning.* Any person who enters into the dwelling house, or goes or remains on the premises of another, after being warned not to do so, shall on conviction, be punished as provided in Section 4, provided, that this Section shall not apply to police officers in the discharge of official duties."
>
> "Section 369 (1944), *Separation of races.* It shall be unlawful to conduct a restaurant or other place for the serving of food in the city, at which white and colored people are served in the same room, unless such white and colored persons are effectually separated by a solid partition extending from the floor upward to a distance of seven feet or higher, and unless a separate entrance from the street is provided for each compartment" (1930, Section 5288).

Statement of the Case

These cases were tried in the Circuit Court of Jefferson County sitting without a jury (R. 13) on evidence given by a City of Birmingham detective who testified concerning what had been placed in evidence at the trial of petitioner

Shuttlesworth for this alleged crime in the City Recorder's Court, April 1, 1960. The record of the proceedings (R. 13-34) is for the greatest part taken up by objections to the hearsay nature of the evidence and objections to compelling testimony from defendants in the trespass cases themselves. (The former objections were overruled; the latter sustained.) The relevant testimony admitted into evidence is, however, extremely brief.

In summary, the evidence upon which petitioners Shuttlesworth and Billups were convicted of inciting, aiding or abetting another to go or remain on the premises of another after being warned not to do so was that one, James Gober and one, Albert Davis went to petitioner Rev. Shuttlesworth's house on March 30, 1960 (R. 25-26, 28-29), that petitioner Billups drove Davis there (R. 28), and that petitioner Billups was present (R. 2[illegible]), that petitioner Shuttlesworth asked for volunteers to participate in sit-down demonstrations (R. 25-26, 28-29), that a list, not otherwise described, was made (R. 28-29), that Shuttlesworth announced he would get them out of jail (R. 29), that Gober and Davis participated in sit-down demonstrations on March 31 (R. 30), and that others who attended the meeting at Shuttlesworth's house participated in sit-down demonstrations (R. 30-31). The record contains nothing more.*

On this record petitioner Shuttlesworth was found guilty as charged and sentenced to 180 days hard labor for the city, plus $100.00 fine. Petitioner Billups was found guilty as charged and sentenced to 30 days hard labor for the city and $25.00 fine.

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* Extracts from the transcript are set forth verbatim in the Appendix, *infra*.

How the Federal Questions Were Raised and Decided Below

After conviction in the Recorder's Court of the City of Birmingham, petitioners appealed to the Circuit Court of Jefferson County for trials *de novo*, prior to which they filed motions to strike the complaint and demurrers alleging that §824 and §1436 of the General City Code of Birmingham were applied to deprive them of freedom of assembly and speech under the Fourteenth Amendment; that as applied the ordinances were an enforcement of racial segregation and, therefore, a denial of due process and equal protection of laws, in violation of the Fourteenth Amendment; that the ordinances as applied were so vague as to constitute denial of due process of law in violation of the Fourteenth Amendment (R. 2-4).

The motions to strike and the demurrers were overruled; exceptions were taken (R. 7).

At the close of the State's evidence, petitioners moved to exclude the evidence alleging, among other things, that the trespass convictions (which petitioners allegedly had initiated) were invalid as based solely on race and, therefore, the complaint in this case was a denial of equal protection of the laws and the right of free speech and assembly secured by the Fourteenth Amendment; that the introduction of the proceedings in Recorder's Court through hearsay evidence constituted a violation of the petitioner's rights under the Fourteenth Amendment (R. 5, 6).

The motions to exclude the evidence were overruled and exception taken (R. 7).

At the end of the trial petitioners moved for new trials alleging, among other things, that: the ordinance under which they were convicted had been applied to deny free-

dom of speech, due process and equal protection of the laws in violation of the Fourteenth Amendment; that the Court erred in overruling the motion to strike the complaint, the demurrer, and the motion to exclude the evidence (R. 9-10).

The motions for new trial were overruled (R. 7-8).

Appeals were taken to the Alabama Court of Appeals and Assignments of Errors were filed against the action of the trial court in overruling the motion to strike the complaint (Assignment 1), the demurrers (Assignment 2), the motion to exclude the evidence (Assignment 3) and the motion for new trial (Assignment 4) (R. 42).

A full opinion was written by the Court of Appeals in *Shuttlesworth* v. *City of Birmingham*, 6 Division 802, (Shuttlesworth 45-47). In *Billups'* case after a brief reference to testimony thought to implicate him, his conviction was affirmed on the authority of *Shuttlesworth* (Billups 45, 46).

The Court ruled adversely to all constitutional issues raised by petitioners:

> "There is no question of the restriction of any right of free speech or other assimilated right derived from the Fourteenth Amendment, since the appellant counseled the college students not merely to ask service in a restaurant, but urged, convinced and arranged for them to remain on the premises presumably for an indefinite period of time. There is a great deal of analogy to the sit-down strikes in the automobile industry referred to in *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240.
>
> "As presented by the appellant's assignments of error and brief, the judgment below is due to be
>
> AFFIRMED."

Applications for rehearing before the Court of Appeals were overruled (Shuttlesworth 48; Billups 47). Writs of Certiorari, sought in the Supreme Court of Alabama were denied (Shuttlesworth page after 49, Billups page after 47). Application for rehearing before the Supreme Court of Alabama were overruled (Shuttlesworth 55, Billups 53).

Reasons for Granting the Writ

The court below decided federal constitutional propositions in conflict with decisions of this Court.

The conviction of petitioners and judgments sentencing them to hard labor in jail for 180 and 30 days respectively, denied them liberty secured by the due process clause of the Fourteenth Amendment to the United States Constitution. This liberty has been taken away solely because petitioners exercised Fourteenth Amendment rights of free speech and assembly. " . . . [F]reedom of speech, though not absolute, *Chaplinsky* v. *New Hampshire* . . . , is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." *Terminiello* v. *Chicago*, 337 U. S. 1, 4. Petitioners are not charged with having conducted a meeting in an unlawful manner, *e.g.*, by sound truck (*Kovacs* v. *Cooper*; 336 U. S. 77) or without a permit where one was required, *Cox* v. *New Hampshire*, 312 U. S. 569, or under circumstances dangerous to public safety, e.g., *Feiner* v. *New York*, 340 U. S. 315, but cf. *Terminiello* v. *City of Chicago*, 337 U. S. 1, or to have spoken or met in a manner otherwise illegal. Neither have they been punished for crime for having created a clear and present danger of a substantive evil which the state has the power to prevent. Cf. *Schenck* v. *United States*, 249 U. S. 47.

In this case the record demonstrates merely that petitioner Shuttlesworth "asked for volunteers and that there were some volunteers to take part in 'sit-down' demonstrations; Shuttlesworth promised to get them out of jail" (Opinion of Alabama Court of Appeals, *Shuttlesworth* v. *City of Birmingham*, App. 1a). In the case of *Billups*, the record shows only that Billups drove a student to Shuttlesworth's home and attended the meeting at which Shuttlesworth made the request for "volunteers" (Opinion of Alabama Court of Appeals, *Billups* v. *City of Birmingham*, App. 6a). There is no evidence at all that Shuttlesworth requested anyone to perform an unlawful act. The Alabama Court of Appeals states that "the appellant counseled the college students not merely to ask service in a restaurant, but urged, convinced and arranged for them to remain on the premises *presumably* for an indefinite period of time" (App. 1a (emphasis supplied)). The Alabama Court of Appeals also held that a "sit-down" demonstration being a form of trespass after warning, denotes violation of State law and especially of §1436 of the City Code, *supra* (*ibid.*).

But the record does not at all support these conclusions. See *Thompson* v. *City of Louisville*, 326 U. S. 199.

Petitioner Shuttlesworth's request for volunteers to participate in sit-down demonstrations does not on this record in any sense at all support a conclusion that he "urged, convinced and arranged for them to remain on the premises presumably for an indefinite period of time." Nor does it support at all a conclusion that he asked them to engage in "trespass after warning." A "sit-down" demonstration may take many forms. See Pollitt, Duke L. J., *Dime Store Demonstrations: Events and Legal Problems of First Sixty Days*, 315 (1960). Such demonstrations are not at all necessarily a crime as this Court demonstrated by its decision

in *Garner* v. *Louisiana*, 7 L. ed. 207 (1961). Moreover, state courts under varying sets of facts have acquitted or reversed the convictions of participants in such demonstrations.

See Pollitt, *op. cit. supra*, at p. 350 (trespass convictions of students convicted in Raleigh, N. C. dismissed); *King* v. *City of Montgomery*, —— Ala. ——, 128 So. 2d 341 (trespass convictions for sit-in in private hotel reversed); *Briscoe* v. *State of Texas*, 341 So. 2d 432; *Rucker* v. *State of Texas*, 341 So. 2d 434; *Tucker* v. *State of Texas*, 341 So. 2d 433; *Johnson* v. *State of Texas*, 341 So. 2d 434 (convictions of sit-ins for unlawful assembly reversed).

There is no evidence in this record concerning precisely the activities petitioners are supposed to have counseled, and no evidence concerning the activities in which students are supposed to have engaged following petitioners' advice when they participated in sit-ins. But even if one were to notice, *arguendo*, the convictions of *Gober, et al.*, now here in No. 694 on Petition for Writ of Certiorari, it is respectfully submitted that the demonstrators in those cases committed no crimes but were engaged in activities protected by the Fourteenth Amendment to the United States Constitution. The request for nonsegregated service in the face of the Birmingham segregation ordinance did not constitute illegal activity by those students when viewed in the light of the Fourteenth Amendment to the United States Constitution[1] for the proprietors were compelled to refrain from serving those petitioners by the Ordinance.[2]

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[1] Additional reasons demonstrating the unconstitutionality of the convictions in *Gober* are set forth in the petition in No. 694 to which petitioners here respectfully refer the Court.

[2] " 'Sec. 369. Separation of races.

It shall be unlawful to conduct a restaurant or other place for serving of food in the city, at which white and colored

Consequently any "trespass" that occurred stemmed directly from the segregation law. Such convictions obviously were unconstitutional.

Petitioners having met and expressed themselves in a manner which was entirely legal and having counseled activities which were entirely legal and concerning which there is no evidence whatsoever of illegality, were engaged in constitutionally protected free expression. Indeed, as Mr. Justice Harlan pointed out in his concurring opinion in *Garner*, a lawfully conducted sit-in protest is an exercise of First Amendment and (as against the states) Fourteenth Amendment rights. Counseling another to engage in such activity absent any evidence that illegal conduct is sought by the counsellor is *a fortiori* the exercise of free speech.[3] Here petitioners did not seek to achieve a sub-

---

people are served in the same room, unless such white and colored persons are effectually separated by a solid partition extending from the floor upward to a distance of seven feet or higher, and unless a separate entrance from the street is provided for each compartment' " (1930, §5288).

This ordinance is judicially noticeable by the Alabama courts, 7 Code of Alabama, 1940, §429(1). See *Shell Oil* v. *Edwards*, 263 Ala. 4, 9, 88 So. 2d 689 (1955); *Smiley* v. *City of Birmingham*, 255 Ala. 604, 605, 52 So. 2d 710 (1951). " 'The act approved June 18, 1943, requires that all courts of the State take judicial knowledge of the ordinances of the City of Birmingham.' " *Monk* v. *Birmingham*, 87 F. Supp. 538 (N. D. Ala. 1949), aff'd 185 F. 2d 859, cert. denied 341 U. S. 940. And this Court takes judicial notice of laws which the highest court of a state may notice. *Junction R.R. Co.* v. *Ashland Bank*, 12 Wall. (U. S.) 226, 230; *Abie State Bank* v. *Bryan*, 282 U. S. 765, 777, 778; *Adams* v. *Saenger*, 303 U. S. 59; *Owings* v. *Hull*, 9 Peters (U. S.) 607, 625.

[3] Compare *Fiske* v. *Kansas*, 274 U. S. 38, where the criminal syndicalism act was held to have been applied unconstitutionally where it was not shown that defendants had advocated unlawful methods to obtain their goals. In the case now at bar petitioners' goals were consonant with those of the high aspirations of the Fourteenth Amendment. Cf. *Railway Mail Ass'n* v. *Corsi*, 326 U. S. 88, 98 (Justice Frankfurter's concurring opinion).

stantive evil which the state has a right to prevent, see *Schenck* v. *United States*, 249 U. S. 47; rather, they sought nonsegregated food service in the face of an obviously unconstitutional racial segregation ordinance in the City of Birmingham which asserted a power the state does not possess.

Conviction of petitioners under the "inciting" ordinance is even further offensive to the Fourteenth Amendment because this ordinance does not reasonably apprise anyone that to advocate a sit-in protest is a crime. A statute must give fair warning to a defendant of what acts are prohibited, *Connally* v. *General Construction Co.*, 269 U. S. 385 and where it trenches upon free expression the statute must be even more specific. *Winters* v. *New York*, 333 U. S. 507; *Burstyn* v. *Wilson*, 343 U. S. 495; *Saia* v. *New York*, 334 U. S. 558; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568.

WHEREFORE, for the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

Opinion of Cates, Presiding Judge

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE ALABAMA COURT OF APPEALS

October Term, 1960-61

6 Div. 802

F. L. SHUTTLESWORTH

—v.—

CITY OF BIRMINGHAM

Appeal from Jefferson Circuit Court

CATES, *Judge*:

Appellant was convicted in the Circuit Court of Jefferson County of violating § 824 of the General City Code of Birmingham of 1944, which reads as follows:

> "It shall be unlawful for any person to incite, or aid or abet in, the violation of any law or ordinance of the city, or any provision of state law, the violation of which is a misdemeanor."

The particular corollary crime of which he was accused of inciting others to commit is found in § 1436 of the City Code. This section makes it an offense to remain on the premises of another after a warning. See *James Gober* v. *City of Birmingham*, 6 Div. 797 (Ms.), —— Ala. App. ——, this day decided.

We can only consider one point raised by the assignments of error and the propositions of law and argument, i.e., the sufficiency of the evidence to show a violation of § 824, supra.

The statement of the case set forth in appellant's brief (which we are entitled to rely upon without regard to the record itself in civil cases) is that Shuttlesworth asked for volunteers, and that there were some volunteers to take part in, 'sit-down' demonstrations; Shuttlesworth promised to get them out of jail.

The appellant's argument on this point deliberately evades the effect of the word "incite" in the city ordinance, and deals solely with the joint responsibility of an aider and abetter. It is sufficient to answer this argument by a quotation from Jowitt's *Dictionary of English Law*, p. 953:

> "Everyone who incites any person to commit a crime is guilty of a common law misdemeanor, even though the crime is not committed. If the crime is actually committed, he is an accessory before the fact in the case of felony, and equally guilty, in the case of treason or misdemeanor, with the person who commits the crime."

A sit-down demonstration being a form of trespass after warning, denotes a violation of both State law and especially of § 1436 of the City Code, supra.

There is no question of the restriction of any right of free speech or other assimilated right derived from the Fourteenth Amendment, since the appellant counseled the college students not merely to ask service in a restaurant, but urged, convinced and arranged for them to remain on the premises presumably for an indefinite period of time. There is a great deal of analogy to the sit-down strikes in the automobile industry referred to in *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240.

As presented by the appellant's assignments of error and brief, the judgment below is due to be

AFFIRMED.

Order of Affirmance in Shuttlesworth Case

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE ALABAMA COURT OF APPEALS

October Term, 1960-61

6 Div. 802

F. L. SHUTTLESWORTH

—v.—

CITY OF BIRMINGHAM

Appeal from Jefferson Circuit Court

November 2, 1960

CERTIFICATE FILED

January 26, 1961

TRANSCRIPT FILED

April 18, 1961

Come the parties by attorneys, and argue and submit this cause for decision.

May 30, 1961

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

Order Denying Application for Rehearing in Shuttlesworth Case

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE ALABAMA COURT OF APPEALS

October Term, 1960-61

6 Div. 802

F. L. SHUTTLESWORTH

—v.—

CITY OF BIRMINGHAM

Appeal from Jefferson Circuit Court

June 14, 1961

Now comes appellant, in the above styled cause, and respectfully moves this Honorable Court to grant appellant a rehearing in said cause, and to reverse, revise and hold for naught its Judgment rendered on to-wit, the 30th day of May, 1961, and affirming the Judgment of the Circuit Court of Jefferson County, Alabama, and to enter an Order, reversing said Judgment.

ARTHUR D. SHORES
ORZELL BILLINGSLEY, JR.
PETER A. HALL
OSCAR W. ADAMS, JR.
J. RICHMOND PEARSON
Attorneys for Appellant

June 20, 1961

It is ordered that the application for rehearing be and the same is hereby overruled.

CATES, *Judge.*

Order Denying Application for Rehearing in Shuttlesworth Case

June 20, 1961

ON REHEARING

CATES, *Judge*:

The application for rehearing in this case is supported by a brief which contains two propositions of law, both of which are predicated on the appellant's having been convicted under § 1436 of the General City Code of Birmingham.

This appellant was convicted of inciting others to violate § 1436. The propositions accordingly have no bearing on the facts.

APPLICATION OVERRULED.

Order of Filing in Shuttlesworth Case

SIXTH DIVISION

No. 764

EX PARTE F. L. SHUTTLESWORTH

IN THE SUPREME COURT OF ALABAMA

F. L. SHUTTLESWORTH

Appellant

CITY OF BIRMINGHAM

Appellee

ARTHUR D. SHORES
PETER A. HALL
ORZELL BILLINGSLEY, JR.
J. RICHMOND PEARSON
OSCAR W. ADAMS, JR.
Attorneys for Appellant

July 5, 1961

SUBMITTED ON BRIEFS

September 25, 1961

WRIT DENIED: NO OPINION

October 4, 1961

APPLICATION FOR REHEARING FILED

APPLICATION FOR REHEARING OVERRULED

November 16, 1961

Order Denying Petition for Writ of Certiorari to the Court of Appeals in Shuttlesworth Case

THE SUPREME COURT OF ALABAMA

Thursday, November 16, 1961

The Court met pursuant to adjournment

Present: All the Justices

(Lawson's Division Sitting)

6th Div. 764

Ex Parte:

F. L. SHUTTLESWORTH,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

(Re: F. L. SHUTTLESWORTH v. CITY OF BIRMINGHAM)
Jefferson Circuit Court

IT IS HEREBY ORDERED that the application for rehearing filed on October 4, 1961, be and the same is hereby overruled.

LIVINGSTON, *C.J.*, LAWSON, STAKELY and MERRILL, *JJ.*, concur.

Opinion of Price, Presiding Judge in Billups Case

May 30, 1961

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE ALABAMA COURT OF APPEALS

October Term, 1960-61

6 Div. 795

CHARLES BILLUPS

—v.—

CITY OF BIRMINGHAM

Appeal from Jefferson Circuit Court

PRICE, *Judge*:

This is a companion case to that of F. L. Shuttlesworth v. City of Birmingham, 6 Div. 802.

The facts set out in the Shuttlesworth case are adopted as the facts of this case, with this additional statement: "On March 30, 1960, Rev. Billups went to Daniel Payne College in a car, where he picked up one James Albert Davis, a student, and carried him to the home of Rev. F. L. Shuttlesworth, where several people had gathered, among them Rev. Shuttlesworth, his wife, and several other students from Daniel Payne College. Rev. Billups was also at said meeting." Under this testimony the jury was fully justified in finding that this defendant was part and parcel of the entire scheme.

On the authority of Shuttlesworth v. City of Birmingham, supra, the judgment is due to be, and hereby is, affirmed.

AFFIRMED.

Opinion in Billups Case

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE ALABAMA COURT OF APPEALS

October Term, 1960-61

6 Div. 795

CHARLES BILLUPS

—v.—

CITY OF BIRMINGHAM

Appeal from Jefferson Circuit Court

November 2, 1960

CERTIFICATE FILED

January 26, 1961

TRANSCRIPT FILED

April 18, 1961

Come the parties by attorneys, and argue and submit this cause for decision.

May 30, 1961

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

Order Denying Application for Rehearing in Billups Case

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE ALABAMA COURT OF APPEALS.

October Term, 1960-61

6 Div. 795

CHARLES BILLUPS

—v.—

CITY OF BIRMINGHAM

Appeal from Jefferson Circuit Court

June 14, 1961

Now comes appellant, in the above styled cause, and respectfully moves this Honorable Court to grant appellant a rehearing in said cause, and to reverse, revise and hold for naught its Judgment rendered on, to-wit, the 30th day of May, 1961, and affirming the Judgment of the Circuit Court of Jefferson County, Alabama, and to enter an Order, reversing said Judgment.

ARTHUR D. SHORES
ORZELL BILLINGSLEY, JR.
PETER A. HALL
OSCAR W. ADAMS, JR.
J. RICHMOND PEARSON

Attorneys for Appellant

June 20, 1961

It is ordered that the application for rehearing be and the same is hereby overruled.

PER CURIAM.

Order of Filing in Billups Case

SIXTH DIVISION

No. 763

EX PARTE: CHARLES BILLUPS

IN THE SUPREME COURT OF ALABAMA

CHARLES BILLUPS

Appellant

—VS.—

CITY OF BIRMINGHAM

Appellee

ARTHUR D. SHORES
PETER A. HALL
ORZELL BILLINGSLEY, JR.
OSCAR W. ADAMS
J. RICHMOND PEARSON
Attorneys for Appellant.

July 5, 1961,—Submitted on Briefs

Sept. 25, 1961,—Writ denied: No opinion

Oct. 4, 1961,—Application for Rehearing filed

Nov. 16, 1961,—Application for Rehearing Overruled

Order Denying Petition for Writ of Certiorari to the Court of Appeals in Billups Case

THE SUPREME COURT OF ALABAMA

Thursday, November 16, 1961

The Court met pursuant to adjournment

Present: All the Justices

(Lawson's Division Sitting)

6th Div. 763

Ex Parte:

CHARLES BILLUPS,

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

(Re: CHARLES BILLUPS v. CITY OF BIRMINGHAM)
Jefferson Circuit Court

IT IS HEREBY ORDERED that the application for rehearing filed on October 4, 1961, be and the same is hereby overruled.

LIVINGSTON, *C.J.*, LAWSON, STAKELY and MERRILL, *JJ.*, concur.

Extracts From Transcript of Proceedings*

"Q. Mr. [detective] Pierce, were you present in the City's Recorder's Court, the Honorable William Conway presiding, on the evening of April 1, 1960 at which time Rev. F. L. Shuttlesworth, or F. L. Shuttlesworth, was on trial for violation of a City Ordinance?

"A. Yes, sir, I was there.

"Q. On that occasion did a James Gober make any statement under oath and in the presence of the defendant Shuttlesworth, in the presence and hearing of the defendant Shuttlesworth, and in the presence and hearing of his counsel on that occasion?

"A. Yes sir, he did" (R. 17-18).

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"The Court: May I inquire whether the witness heard James Gober in the presence of defendant Shuttlesworth say anything about where he had been the afternoon before or two days before, whether it was the 30th or 31st or the 1st of April" (R. 21)?

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"A. I heard him testify that he was a student at Daniel Payne College" (R. 21).

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"Q. Did he say where that place was on March 30th he went (R. 25)?

"A. He said he went to Rev. Shuttlesworth's house.

"Q. Did he make any remarks as to who was present when he arrived at Rev. Shuttlesworth's house?

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* This constitutes all of the testimony introduced in evidence except for material which is repetitive or introductory.

"A. He said there were several people present. He named Rev. Shuttlesworth and the Rev. Billups. Said they were there.

"Q. Did he mention that either Rev. Shuttlesworth or Rev. Billups made any statement there on that occasion?"

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"A. He testified that the sit-down demonstrations was discussed at the meeting.

"Q. Did he state whether or not Rev. Shuttlesworth participated in that discussion of the sit down demonstration?

"A. He testified the meeting was in the living room of Rev. Shuttlesworth's house and that Rev. Shuttlesworth participated in the discussion about the sit-down demonstrations" (R. 25-26).

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"Q. Did the witness say that Shuttlesworth sought volunteers for this demonstration, this sit in demonstration?"

• • • • •

"A. He testified that Rev. Shuttlesworth asked for volunteers to participate in the sit-down demonstrations (R. 26).

"Q. Did I understand you correct, Mr. Pierce, to say that he stated Rev. Billups was there at this meeting also?"

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"A. He stated that Rev. Billups was there in the meeting (R. 27).

"Q. Did he make any reference to any list being made at this meeting held at Rev. Shuttlesworth's house?

"A. He did."

• • • • •

"A. He testified that there was a list made but he didn't know who made the list."

• • • • •

"Q. I will ask you, Mr. Pierce, if on this same evening of April, 1960 in the presence and hearing of Rev. Shuttlesworth and Rev. Billups if James Albert Davis, while under oath, made any statements concerning this meeting held at Rev. Shuttlesworth's house". (R. 28)?

• • • • •

"A. He did.

"Q. Will you tell the Court what, if anything, he said on this occasion that took place at the house of Rev. Shuttlesworth at this hearing or discussion wherein both Rev. Shuttlesworth and Rev. Billups were present."

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"A. He testified that Rev. Billups came to his school, Daniel Payne College, in a car and carried him to Rev. Shuttlesworth's house. He further testified that when he arrived there there were several people there, among which was Rev. Shuttlesworth and Rev. Shuttlesworth's wife and a number of other students from Daniel Payne College. He testified that in response to Rev. Shuttlesworth asking for volunteers to participate in the sit-down strikes that he volunteered to go to Pizitz at 10:30 and take part in the sit-down demonstrations. He further testified that a list was made but he didn't know who made the list. He thought the list was compiled by—" (R. 28-29).

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"A. He said he didn't know or wasn't sure who made the list and he testified that Rev. Shuttlesworth didn't say that he would furnish Counsel but told him or made

the announcement at that time that he would get them out of jail."

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"Q. Do you know it to be a fact that a number of boys—or I will put it this way. Do you know it to be a fact that James Gober and James Albert Davis did participate in sit-down or sit-in demonstrations on the day of March 31, 1960 (R. 30)?

"A. Yes sir, they did.

"Q. Do you know of your own knowledge that other colored boys on that same date participated in sit-in demonstrations in down town stores in the City of Birmingham?"

• • • • •

"Q. Let me put it this way. Other boys who attended the meeting at Rev. Shuttlesworth's house?"

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"A. Yes" (R. 30).

• • • • •

"Q. Did either Gober or Davis while at that Court hearing and under the conditions we have previously outlined state that other persons were present—I am speaking of in the Court room now—did they state that other persons were present who did participate in these demonstrations at Rev. Shuttlesworth's house on March 30, 1960?

"A. Yes sir" (R. 31).